

DEVELOPMENT AGREEMENT

THIS AGREEMENT (hereinafter the "Agreement") is made and entered into this _____ day of _____, 1999 by and between the **CITY OF BRIGHTON, COLORADO**, a municipal corporation of the county of Adams, State of Colorado (hereinafter called the "**City**"), and _____(a _____ corporation) herein after referred to as "Developer".

WHEREAS, Developer has submitted a Final Development Plan ("Plan") for _____ ("Development") attached hereto as Exhibit A and incorporated herein by reference. Said Plan has been reviewed and approved by the Planning Commission and City Council of the City; and

WHEREAS, the development regulations of the City require that the public improvement obligations be guaranteed in a form acceptable to the City; and

WHEREAS, the development regulations of the City require the Developer to execute a development agreement ("Agreement") with the City relative to improvements related to the development;

DRAFT TEMPLATE

NOW THEREFORE, in consideration of the foregoing, the **parties**
hereto **promise, covenant, and agree as follows:**

SECTION 1
GENERAL CONDITIONS

- 1.1. **Development Obligation.** Developer shall be responsible for the performance of the covenants set forth herein.
- 1.2. **Engineering Services.** Developer agrees to furnish, at its expense, all necessary engineering services relating to the design and construction of the Development and the Schedule of Improvements described in Exhibit B, attached hereto and incorporated herein by this reference. Said engineering services shall be performed by or under the supervision of a Registered Professional Engineer or Registered Land Surveyor, or other professionals as appropriate, licensed by the State of Colorado, and in accordance with applicable Colorado law, and shall conform to the standards and criteria for public improvements as established and approved by the City as of the date of submittal to the City.
- 1.3. **Construction Standards.** Developer shall construct all improvements required by this Agreement, and any other improvements constructed in relation to the Development, in accordance with the plans and specifications approved in writing by the City, and with the _____ Final Development Plan, and in full conformity with the City's construction specifications applicable at the time of construction plan approval.

- 1.4. **Development Coordination.** Unless specifically provided in this Agreement to the contrary, all submittals to the City or approvals required of the City in connection with this Agreement shall be submitted to or rendered by the City Manager, or the Manager's designee, who shall have general responsibility for coordinating development with the Developer.
- 1.5. **Plan Submission and Approval.** Developer shall furnish to the City complete plans for each public improvement Phase and obtain approval of each Phase prior to commencing any construction work thereon. The City shall issue its written approval or disapproval of said plan as expeditiously as reasonably possible. Said approval or disapproval shall be based upon standards and criteria for public improvements as established and approved by the City, and the City shall notify Developer of all deficiencies which must be corrected prior to approval. All deficiencies shall be corrected and said plans shall be resubmitted to and approved by the City prior to construction.
- 1.6. **Construction Acceptance and Warranty.** No later than ten (10) days after improvements are completed, Developer shall request inspection by the City. If Developer does not request this inspection within ten (10) days of completion of improvements, the City may conduct the inspection without approval of Developer. Developer shall provide "as built" drawings and a certified statement of construction costs no later than thirty (30) days after improvements are completed. If Developer has not completed the improvements

on or before the completion dates set forth in the “Phasing Plan” provided for in Section 1.14 herein, the City may exercise its rights to secure performance as provided in Section 9.1 of this Agreement. If improvements completed by Developer are satisfactory, the City shall grant “construction acceptance”, which shall be subject to final acceptance as set forth herein. If improvements completed by Developer are unsatisfactory, the City shall provide written notice to Developer of the repairs, replacements, construction or other work required to receive “construction acceptance”. Developer shall complete the work within thirty (30) days of said notice, weather permitting. After Developer does complete the repairs, replacements, construction or other work required, Developer shall request of the City a reinspection of such work to determine if construction acceptance can be granted, and the City shall provide written notice to Developer of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Developer’s expense. If Developer does not complete the repairs, replacements, construction or other work required within thirty (30) days of said notice, the City may exercise its right to secure performance as provided in Section 9.1 of this Agreement. The City reserves the right to schedule reinspections, depending upon scope of deficiencies. **No Building Permits shall be issued by the Building Division prior to Construction Acceptance.**

- 1.7. **Maintenance of Improvements.** For a one (1) year period from the date of “construction acceptance” of any improvements related to

the Development, Developer shall, at its own expense, take all actions necessary to maintain said improvements and make all needed repairs and replacements which, in the reasonable opinion of the City, shall become necessary. If within thirty (30) days after Developer's receipt of written notice from the City requesting such repairs or replacements, the Developer has not completed such repairs, the City may exercise its rights to secure performance as provided in Section 9.1 of this Agreement.

- 1.8. **Final Acceptance.** At least thirty (30) days before one (1) year has elapsed from the issuance of "construction acceptance" or as soon thereafter as weather permits, Developer shall request a "final acceptance" inspection. The City shall inspect the improvements and shall notify the Developer in writing of all deficiencies and necessary repairs. After Developer has corrected all deficiencies and made all necessary repairs identified in said written notice, the City shall issue to Developer a letter of "final acceptance". If Developer does not correct all deficiencies and make repairs identified in said inspection to the City's satisfaction within thirty (30) days after receipt of said notice, weather permitting, the City may exercise its rights to secure performance as is provide in Section 9.1 of this Agreement. If any mechanic's liens have been filed with respect to the public improvements, the City may retain all or a portion of the Improvement Guarantee up to the amount of such liens. If Developer fails to have improvements finally accepted within one year of the date of the issuance of construction acceptance or any

improvements are found not to conform to this Agreement, or to applicable City standards and specifications, then Developer shall be in default of the Agreement and the City may exercise its rights under Section 9.1 of the Agreement.

1.9. **Reimbursement to the City.** The City may complete construction, repairs, replacements or other work for Developer pursuant to Sections 1.6, 1.7, 1.8, or 1.9 of the Agreement with funds other than the Improvements Guarantee, in which event Developer shall reimburse the City within thirty (30) days after receipt of written demand and supporting documentation from the City. If Developer fails to so reimburse City, the Developer shall be in default of the Agreement and the City may exercise its rights under Section 9.1 of this Agreement.

1.10. **Testing and Inspection.**

(a) Developer shall employ, at its own expense, a licensed and registered testing company, previously approved by the City in writing, to perform all testing of materials or construction that may be reasonably required by the City, and shall furnish copies of test results to the City on a timely basis for City review and approval prior to commencement or continuation of that particular phase of construction. In addition, at all times during said construction the City shall have access to inspect the materials and workmanship of said construction and all materials and work not conforming to the approved plans and specifications shall be repaired or removed and

replaced at Developer's expense so as to conform to the approved plans and specifications.

(b) All work shown on the approved public improvements plans requires inspection by the Public Works Department, Engineering Division. Inspection services are provided Monday through Friday, except legal holidays, from 8:00 a.m. to 5:00 p.m., throughout the year. During the hours listed above, inspections shall be scheduled a minimum of 24 hours in advance with the Engineering Division. Requests for inspection services beyond the hours listed above shall be submitted a minimum of 48 hours in advance to the Director of Public Works for approval. All requests for after hours inspection services shall be made on a form provided by the Engineering Division. If the request is approved, the Developer shall reimburse the City for all direct costs of the after hours inspection services. If the request is denied, the work shall not proceed after the hours listed above.

- 1.11. **Improvement Guarantees.** Developer shall submit to the City an Improvement Guarantee for all public improvements related to each Phase of the Development. Said guarantee may be in cash or a letter of credit in form and substance as shown on **Exhibit C** attached hereto and incorporated herein by reference. Said guarantee, if a letter of credit, shall not expire during the winter season (November - March). Said Improvement Guarantee shall include, but not by way of limitation, street construction, landscaping, fencing, streetlights, water, sewer, storm sewer and drainage improvements.

Building permits shall be issued for only that phase of the Development for which said guarantees have been furnished. The total amount of the guarantee for each Phase shall be calculated as a percentage of the total estimated cost including labor and materials of all public improvements to be constructed in said Phase of the Development as described on Exhibit B. The total minimum amounts are as follows:

(a) Prior to City approval of Public Improvements

Construction Plans—115%

(b) Upon Construction Acceptance prior to Final Acceptance—15%

(c) After Final Acceptance—0%

In addition to any other remedies it may have, the City may, at any time prior to Final Acceptance, draw on any Improvement Guarantee issued pursuant to this Agreement if Developer fails to extend or replace any such Improvement Guarantee at least (30) days prior to expiration of such Improvement Agreement. If the City draws on the guarantee to correct deficiencies and complete improvements, any portion of said guarantee not utilized in correcting the deficiencies and/or completing improvements shall be returned to Developer within thirty (30) days after said final acceptance. In the event that the Improvement Guarantee expires or the entity issuing the Improvement Guarantee becomes non-qualifying, or the cost of improvements and construction is reasonably determined by the City to be greater than the amount of the security provided, then the City shall furnish written notice to

the Developer of the condition, and within thirty (30) days of receipt of such notice the Developer shall provide the City with a substituted qualifying Improvements Guarantee, or augment the deficient security as necessary to bring the security into compliance with the requirements of this Section 1.11. If such an Improvement Guarantee is not submitted or maintained, then Developer is in default of this Agreement and is subject to the provisions of Section 9.1 of this Agreement, as well as the suspension of the development activities by the City, including but not limited to, the issuance of building permits and certificates of occupancy.

- 1.12. **Indemnification and Release of Liability.** Developer agrees to indemnify and hold harmless the City, its officers, employees, agents or servants and to pay any and all judgments rendered against said persons on account of any suit, action or claim caused by, arising from or on account of acts or omissions by the Developer, its officers, employees, agents, consultants, contractors and subcontractors, and to pay to the City and said persons their reasonable expenses, including, but not limited to, reasonable attorney's fees and reasonable expert witness fees incurred in defending any such suit, action or claim; provided, however, that Developer's obligation herein shall not apply to the extent said action, suit, or claim results from any acts or omissions of officers, employees, agents or servants of the City or conformance with requirements imposed by the City. Said obligation of Developer shall be limited to suits, actions, or claims based upon conduct prior

to “final acceptance” by the City of the construction work. Developer acknowledges that the City’s review and approval of plans for development of the property is done in furtherance of the general public’s health, safety and welfare and that no immunity is waived and no specific relationship with, or duty of care to, the Developer or third parties is assumed by such approval.

- 1.13. **Insurance OSHA.** Developer shall, through contract requirements and other normal means, guarantee and furnish to the City proof thereof that all employees and contractors engaged in the construction of improvements are covered by adequate workmen’s compensation insurance and public liability insurance, and shall require the faithful compliance with all provisions of the Federal Occupational Safety and Health Act (OSHA).
- 1.14. **Phasing.** The City hereby approves Developer’s Phasing Plan, which is a part of the attached **Exhibit B**. The completion of each Phase of the Development, including public and private improvements, shall be in accordance with said plan and completion schedules or City-approved modifications thereof. All modifications shall be in writing and signed by the City Manager or the Manager’s designee.

SECTION 2

CONSTRUCTION OF IMPROVEMENTS

- 2.1. **Rights-of-way, Easements and Permits.** Before City may approve construction plans for any improvements herein agreed upon, Developer shall acquire at its own expense and convey to the City all necessary land, rights-of-way and easements required by the City for the construction of the proposed improvements related to the Property. All such conveyances shall be free and clear of liens, taxes and encumbrances and shall be by Special Warranty Deed in form and substances acceptable to the City Manager or the Manager's designee. The City at the Developer's expense shall record all title documents. The Developer shall also furnish, at its own expense, an ALTA title policy, for all interest(s) so conveyed, subject to approval by the City Manager or the Manager's designee.
- 2.2. **Construction.** Developer shall furnish and install, at its own expense, the improvements listed on the "Schedule of Improvements" attached as Exhibit B, in conformance with the drawings, plans and specifications approved by the City prior to construction. If Developer does not meet the above obligations, then Developer shall be in default of the Agreement and the City may exercise its rights under Section 9.1 of the Agreement.
- 2.3. **Utility Coordination and Installation.** In addition to the Improvements described on **Exhibit B**, Developer shall also be responsible for coordination of and payment for installation of on-site and off-site electric, street lights, natural gas, telephone and utilities. All utilities shall be placed underground to the extent required by City Code.

SECTION 3

STREET IMPROVEMENTS

- 3.1. **Definitions.** For the purposes of this Agreement, “street improvements” shall be defined to include, where applicable, but not limited to, all improvements within the right-of-way such as bridges, sub-base preparation, road base, asphalt, concrete, seal coat, curb and gutter, medians, entryways, underground utilities, sidewalks, bicycle paths, traffic signs, street lighting, street name signs, landscaping and drainage improvements.
- 3.2. **Street Signs, Traffic Signs and Striping.** The Developer will install, at Developer’s expense, street name signs on local, collector and arterial streets, and stop signs, speed limit and other signs on local streets. Developer shall install, at its expense, signs, striping on collector and arterial streets in a manner reasonably approved by the City and in accordance with the Model Traffic Code, as from time to time amended, and other applicable legal requirements.

SECTION 4

PUBLIC LAND DEDICATION AND LANDSCAPING

- 4.1. **Public Land Dedication.** Developer shall convey to the City lands for public use as described on **Exhibit D** attached hereto and incorporated herein by reference. Said conveyance shall be by special warranty deed in form and substance satisfactory to the City

Manager or the Manager's designee. The Developer shall, at the Developer's expense, furnish a commitment for title insurance on the Property. The Property shall be free and clear of liens, taxes and encumbrances, except for ad valorem real property taxes for calendar year ____ and thereafter, but subject to all easements, rights-of-way, reservations, restrictions or other title burdens of record which would be readily apparent from a physical inspection. The Developer shall, at its expense, cause a title policy in conformance herewith to be delivered to the City at the time of the conveyance.

- 4.2. **Landscape Improvements.** For public lands and rights-of-way, Developer shall furnish to the City complete final landscape and irrigation plans for each Phase and obtain approval by the City Manager or the Manager's designee prior to commencement of construction. Developer shall furnish a final landscape plan to the City Manager or the Manager's designee for approval prior to installation of landscape improvements.

SECTION 5

WATER MAINS

- 5.1. **Specifications.** All water mains, lines and appurtenances thereto shall be constructed and installed, at the minimum, pursuant to City-approved plans, specifications and the Schedule of

Improvements attached as Exhibit B, including both on-site and off-site improvements.

SECTION 6

SEWER LINES

- 6.1. **Specifications.** All sewer lines and appurtenances thereto shall be constructed and installed, at the minimum, pursuant to City-approved plans, specifications and the Schedule of Improvements attached as Exhibit B, including both on-site and off-site improvements.

SECTION 7

OTHER IMPROVEMENTS

- 7.1. **Street Lights.** The total cost of street light installation shall be the Developer's obligation. Developer shall cause, at its own expense, United Power to install all required street lighting pursuant to City plans and specifications. Said streetlights shall be installed concurrently with the streets on which they are located.
- 7.2. **Drainage Improvements.**
- (a) Drainage improvements for the Development shall be constructed by Developer and, at the minimum, in accordance with plans and specifications approved by the City. Developer shall initiate no overlot grading until the City approves drainage improvement plans in writing. Developer shall provide temporary

erosion control during overlot grading until drainage improvements are installed as dictated by the EPA Phase II Storm Water regulations for sites over one acre.

(b) Drainage improvements for each lot shall be constructed by the owner of said lot, at the minimum, in accordance with plans approved at the time of Plan approval. Said plans shall conform to the City's then-existing floodplain regulations. Developer shall furnish copies of approved plans to subsequent purchasers (other than homeowners) of lots.

- 7.3. **Trash, Debris, Mud.** Developer agrees that during construction of the Development and improvements described herein, Developer shall take any and all steps necessary to control trash, debris and wind or water erosion in the Development. If the City determines that said trash, debris or wind or water erosion causes damage or injury or creates nuisance, Developer agrees to abate said nuisance and/or to correct any damage or injury within five working days after notification by the City. If Developer does not abate said nuisance or if an emergency situation exists, to be determined by the City in its sole discretion, the City may abate the nuisance and/or correct any damage or injury without notice to the Developer at the Developer's expense. Developer also agrees to take any and all steps necessary to prevent the transfer of mud or debris from the construction site onto public rights-of-way and to immediately remove such mud and debris from public rights-of-way after

notification by the City. If Developer does not abate, or if an emergency exists, City may abate at the Developer's expense.

7.4. **Operation of Construction Equipment.**

(a) Pursuant to Section 8.32 of the Brighton Municipal Code, the operation of construction equipment outside an enclosed structure shall be prohibited between the hours of 8:00 p.m. and, on weekdays, the hour of 7:00 a.m. or, on weekends and legal holidays, the hour of 8:00 a.m. The City Manager or the Manager's designee may upon written applications, alter the hours of operation for good cause.

(b) The operation of construction equipment for the purpose of grading or constructing either surface improvements or underground utilities, either public or private, shall be prohibited between the hours of 8:00 p.m. and 7:00 a.m. on weekdays and 4:00 p.m. and 8:00 a.m. on legal holidays and weekends. Upon written request, the City Manager or the Manager's designee may alter the hours of operation.

SECTION 8

SPECIAL PROVISIONS

- 8.1. **School Fees.** The Developer shall dedicate land for public school sites or make payments in lieu of land dedication for public school sites as required in the Intergovernmental Agreement Concerning Fair Contributions for School Sites Between the City of Brighton and Brighton School District 27J, and the Methodology To Determine Fair Contribution

for Public School Sites, attached thereto, dated March 2, 1999, as amended, the terms of which are incorporated herein by this reference.

ANNEXOR agrees to execute a Participant *Agreement* with Brighton School District 27J and the Brighton School District Capital Facility Fee Foundation for payment of the applicable Capital Facility Fee in effect at the time payment is due. As a means of example, the currently adopted fee schedule, applied District-wide, is as follows: \$1010 per single family detached residential unit, \$505 per single family attached residential unit, \$202 per condominium or townhouse unit, \$101 per multi-family unit and \$657 per mobile home unit, based on student generation for each type of unit.

- 8.2. **Temporary Uses.** Temporary uses refer to, but are not limited to, temporary sales office, temporary construction office, construction yard, and model homes. Temporary uses are allowed, with approval of a temporary use permit, for a period of one year, with renewal after that year determined by the Director of Community Development. Model homes are allowed to be constructed on the site with approval from the City Building Official.
- 8.3. **Water Right Dedication.**
- 8.4. **Pacing.**
- 8.5. **Residential Design Standards.**

SECTION 9

MISCELLANEOUS TERMS

- 9.1. **Breach of Agreement.** In the event that the Developer should fail to timely comply with any of the terms, conditions, covenants and

undertakings of this Agreement, and if such noncompliance is not cured and brought into compliance within thirty (30) days of written notice of breach of the Developer by the City, unless the City in writing and in its sole discretion designates a longer period, then the City may draw upon the Improvement Guarantee and complete the Improvements at the Developer's expense. The Developer's expense shall be limited to the costs incurred by the City, as defined herein. Notice by the City to the Developer will specify the conditions of default. In the event that no Improvement Guarantee has been posted or the Improvement Guarantee has been extended or is insufficient, then the City has the right to begin work on the Improvements at the expense of the Developer. If the City determines in its sole discretion that an emergency exists, such that the improvement must be completed in less than seven (7) days, the City may immediately draw upon the Improvement Guarantee if available and may complete the Improvements at Developer's expense even if the Improvement Guarantee is not available; in such event, the City shall use its best efforts to notify Developer at the earliest practical date and time. The City may also, during the cure period and until completion of the improvements in compliance with this Agreement, withhold any additional building permits, certificates of occupancy, or provision of new utilities fixtures or services. Nothing herein shall be construed to limit the City from pursuing any other remedy at law or inequity, which may be appropriate under City, state or federal law. Failure to timely

complete construction of Improvements, which is solely due to inclement weather, shall not be considered a breach of the Agreement. Any costs incurred by the City, including, but not limited to administrative costs and reasonable attorney's fees, in pursuit of any remedies due to the breach by the Developer, shall be the responsibility of the Developer. The City may deduct these costs from the Improvement Guarantee.

- 9.2. **Recording of Agreement.** The City shall record this Agreement at Developer's expense in the office of the Clerk and Recorder in Adams County, Colorado, and the City shall retain the recorded Agreement.
- 9.3. **Binding Effect of Agreement.** This Agreement shall run with the land included within the Development and shall inure to benefit of and be binding upon the successors and assigns of the parties hereto.
- 9.4. **Assignment, Delegation and Notice.** Developer shall provide to the City for approval written notice of any proposed transfer of title to any portion of the Property and of the Development Agreement obligations to any successor, as well as arrangements, if any, for delegation of the improvement obligations hereunder. Developer and successor shall, until written City approval of the transfer of title and delegation of obligations, be jointly and severally liable for the obligations of Developer under this Agreement.
- 9.5. **Modification and Waiver.** No modification of the terms of this Agreement shall be valid unless in writing and executed with the

same formality as this Agreement, and no waiver of the breach of the provisions of any section of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

- 9.6. **Addresses for Notice.** Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

CITY:

City of Brighton
City Manager
22 South 4th Avenue
Brighton, CO 80601

Developer:

With a copy to:

Margaret R. Brubaker, LLC
City Attorney
22 South 4th Avenue
Brighton, CO 80601

With a copy to:

or to such other address or the attention of such person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

- 9.7. **Force Majeure.** Whenever Developer is required to complete construction, maintenance, repair, or replacement of improvements by an agreed-upon deadline, the City may, in its sole discretion, grant a reasonable extension of time if the performance cannot as a practical matter be completed in a timely manner due to Acts of God or other circumstances constituting force majeure or beyond the reasonable control of Developer.
- 9.8. **Approvals.** Whenever approval or acceptance of a matter is required or requested of the City pursuant to any provisions of the Agreement, the City shall act reasonably in responding to such matter.
- 9.9. **Previous Agreements.** All previous written and recorded agreements between the parties, their successors and assigns, including, but not limited to, any Annexation Agreement, shall remain in full force and effect and shall control this Development. If any prior agreements conflict with this Agreement, then this Agreement controls.
- 9.10. **Title and Authority.** Developer warrants to the City that it is the record owner for the Property within the development or is acting in accordance with the currently valid and unrevoked power of attorney of the record owner hereto attached. The undersigned

further warrant having full power and authority to enter into this Agreement.

9.11. **Severability.** This agreement is to be governed and construed according to the laws of the State of Colorado. In the event that upon request of Developer or any agent thereof, any provision of the Agreement is held to be violate of the city, state, or federal laws and hereby rendered unenforceable, the City in its sole discretion, may determine whether the remaining provisions will or will not remain in force.

9.12. **Agreement Status After Final Acceptance.** Upon Final Acceptance by City of all improvements and compliance by Developer with all terms and conditions of this Agreement, and provided that no litigation or claim is pending relating to this Agreement, this Agreement shall no longer be in effect.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written above.

CITY OF BRIGHTON, COLORADO DEVELOPER:
A Municipal Corporation

By: _____ By:

Terrence V. Lucero, Mayor Print Name:

DRAFT TEMPLATE

ATTEST:

OWNER:

By:

Karen Borkowski, City Clerk

Print

Name:

APPROVED AS TO FORM:

Margaret R. Brubaker, Esq.
City of Brighton Attorney

EXHIBIT A

[Reduced copy of development plan]

EXHIBIT B
SCHEDULE OF IMPROVEMENTS

DRAFT TEMPLATE

ITEM	QUANTITY	UNIT PRICE	TOTAL
Water			
Sewer			
Storm Sewer			
Street			
Street Lights			
Street Signs			
Striping			
Landscaping			
Public Use Land			
Special Improv.			

Time Schedule

Improvements herein shall be completed by Developer and construction acceptance requested on or before _____, 20__.

EXHIBIT C
IRREVOCABLE LETTER OF CREDIT
[STANDARD FORM]

EXHIBIT D
LEGAL DESCRIPTION OF
PUBLIC USE LAND DEDICATION
[with location survey, if off site]

EXHIBIT E
NON-IRRIGATION COVENANT

This Covenant is made this ____ day of _____, 1999, between a Colorado Limited Partnership (hereinafter referred to as "Grantor") and THE CITY OF BRIGHTON (hereinafter referred to as "Grantee").

W I T N E S S E T H:

1. Grantor, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby represent that is the owner of approximately 80 acres of land described in Exhibit "A", attached hereto and incorporated herein by this reference ("Land"), and that , as owner of the water, has the right and privilege to execute this Covenant. Grantor covenants that said Land will not be irrigated in the future by the water represented by ____ shares of stock in _____, currently held by _____, certificate number _____, nor by any other water right of, and delivered by, said Company or any other mutual ditch and irrigation company or other provider that may have historically provided any irrigation water to the Land.
2. This Covenant shall become effective _____, 1999.
3. This Covenant is to be binding upon Grantor, its heirs, successors and assigns and is to run with the Land, for the benefit of Grantee, its successors and assigns.
4. Grantor agrees to cooperate with Brighton in all respects in regard to providing information necessary for Grantee to effect transfer of the water shares as provided for, including the preparation of and the giving of testimony at any hearings and trials.
5. Grantor agrees to provide to the Grantee a summary of each and every water right used for the irrigation of the Land for the past 30 years, the crop or crops historically grown on the Land, together with any know cropping patterns or rotations, to the extent known by Grantor.
6. This Covenant shall be recorded in the Clerk and Recorder's office of Adams County, Colorado.

DRAFT TEMPLATE

IN WITNESS WHEREOF, Grantor has executed the foregoing on the date and year first above written.

GRANTOR:

By

STATE OF COLORADO)
) SS.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ as Managing Partner of, a Colorado Limited Partnership, on behalf of the Partnership.